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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 August 1993, at 10 a.m.

Chairman: Mr. AL-KHASAWNEH

later: Mr. YIMER

CONTENTS

Review of further developments in fields with which the Sub-Commission has been concerned (continued)

The administration of justice and the human rights of detainees (continued)

(a) Question of the human rights of persons subjected to any form of detention or imprisonment (continued)

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GE.93-14848 (E)

CONTENTS (continued)

(b) Question of human rights and states of emergency (continued)

(c) Individualization of prosecution and penalties, and repercussions of violations of human rights on families (continued)

(d) The right to a fair trial (continued)

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (continued)

The meeting was called to order at 10.05 a.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1993/2-4, 6-9; E/CN.4/Sub.2/1993/10 and Corr.1-2; E/CN.4/Sub.2/1993/NGO/1; A/CONF.157/23)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS IN STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL
(agenda item 10) (continued) (E/CN.4/Sub.2/1993/19-23; E/CN.4/Sub.2/1993/24 and Add.1-2; E/CN.4/Sub.2/1993/NGO/2, 9, 14 and 15)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1993/25; E/CN.4/Sub.2/1993/NGO/15)

1. Mr. BANDIER (International Association of Educators for World Peace), speaking on agenda item 4, said that the adoption of the Universal Declaration of Human Rights and more than 70 other international human rights instruments had not stopped the bloodshed in every continent in the world. The International Association of Educators for World Peace was trying desperately to inculcate in students in over 60 countries the fundamental principles based on moral and traditional values which seemed to be beyond the control of many of the leaders of the world. It might be wise to rethink some concepts and invert some principles which no longer seemed to meet the needs of the present generation and of those that would follow.

2. The absence of the word "duty" in official documents was a source of surprise and concern to him since it should be interdependent with the concept of rights. One of his organization's principal concerns was precisely centred on respect for human rights and duties. There was no point in continually demanding rights if those in authority were not aware of the duties that went with their positions. In certain cases it could even be said that the duties had priority over rights and it was imperative that they should be defined in a clear and precise way in a charter or some other form of legal instrument which would determine the responsibilities of each individual towards other individuals and towards society as a whole, otherwise the Universal Declaration of Human Rights could never fully be respected.

3. The principle of carrying out those duties should be instilled in children from their earliest years by parents and educators. That was the only way they could grow up to be responsible human beings and true defenders of both rights and freedoms.

4. There was a clear lack of understanding in the world and although people were attached to their own cultural identity, the time had come to look at ways of overcoming division. Ensuring universal respect for human rights meant refusing to politicize related issues and the starting point was to urge all States to do their duty and to respect human rights. Most flagrant human rights violations and the deterioration of the economic and social infrastructure were the consequence of national and regional conflicts and it was therefore essential that all the parties concerned should make every effort to find a peaceful solution to those conflicts.

5. There would always be further developments in fields with which the Sub-Commission had been concerned and the human rights community therefore had a duty to mobilize itself to implement the principles contained in the Vienna Declaration and Programme of Action since they were universally recognized principles. States should be persuaded that it was easier for them to do their duty and ensure respect for human rights than it was to continue registering complaints of violations. The key lay in education which was the responsibility of all Governments throughout the world.

6. Ms. GONZALEZ (Latin American Federation of Associations of Disappeared Detainees (FEDEFAM)), speaking on agenda items 10 and 11, said that her organization wished to address the situation in Colombia, where the Government had continued to make an excessive use of the institution of the state of emergency, thereby directly affecting the administration of justice.

7. Since 10 July 1992 Colombia had been under a state of emergency on the pretext of combating illegal groups, in particular drug traffickers. That had meant that due process and habeas corpus had been sidelined in criminal trials which came under the public order jurisdiction known as "faceless justice" since the judge and the prosecutor were not identified to the accused. Legislation to that end violated article 29 of the Constitution of Colombia, since in emergency proceedings the evidence of witnesses was kept secret from the accused who was thus unable to challenge it.

8. Despite recommendations by the Working Group on Detention, Commission on Human Rights resolution 1993/35 and article 24 of the Constitution of Colombia, the Colombian Government had restricted the guarantee of habeas corpus by decrees impeding its implementation.

9. It could be argued that those limitations were only applied to the emergency courts, but the information received by her organization indicated that it was precisely that system of faceless justice which was responsible for the greater part of the unlawful or arbitrary detentions. It was extremely difficult to appoint a prosecutor to investigate a case when the parties concerned did not know his identity and when the person whose rights had been infringed had disappeared.

10. In those conditions, the administration of justice did not respect the rights and guarantees of detainees and the right to a fair trial could not be guaranteed. The Sub-Commission should therefore urge the Colombian Government to comply not only with the international conventions and covenants to which Colombia had acceded but also with its own Constitution.

11. Although there appeared to be a tripartite separation of powers in Colombia, in practice the Executive had seriously interfered with the work of the Judiciary by means of emergency decrees which had then become permanent legislation. The judicial reform contained in the decrees conferred on the armed forces and the police, which were subordinate to the Ministry of Defence, powers associated with the judicial police. That meant that the independence and impartiality of the Judiciary were undermined since some officials were not answerable to the judicial authorities but to the Executive.

12. For the above-mentioned reasons, which gave grounds for considerable concern, her organization requested the Sub-Commission to urge the Government of Colombia, under agenda item 11, to show greater respect for the relevant norms of international law.

13. Guatemala had been the first country in which the security forces had used the practice of enforced disappearances as a method of dealing with political opponents and since the early 1960s up to 45,000 persons had disappeared in Guatemala. Recently, FEDEFAM had received the testimony of Sergio Fernando Archila who had been arbitrarily detained on 3 August 1992 and held and tortured for five months in secret prisons in different parts of Guatemala. He had testified to having seen many young people and students who were disappeared detainees, all accused of being guerillas.

14. The Commission on Human Rights Independent Expert on Guatemala and international human rights organizations had reported on the direct responsibility of the Presidential Staff with human rights violations in Guatemala, particularly political assassinations and unlawful detentions and had concluded that in order to improve the situation it should be dissolved. On 5 August 1993 the President of Guatemala informed the media of his intention to "restructure" the Presidential Staff, abolishing its security department, better known as "the Archives". The initiative was greeted with scepticism in political circles in Guatemala since it would only affect some 85 police officers out of 2,000.

15. The Mutual Support Group of Relatives of Disappeared Detainees, a member of FEDEFAM, considered that in the light of the imminent establishment of the Truth Commission the dissolution of the department appeared to be an attempt to destroy archives containing the personal files of disappeared or assassinated persons which were necessary to establish the historical truth about responsibility for the human rights violations, and for that reason it had requested the Attorney-General for Human Rights to institute a recourse of habeas data in order to retrieve the information.

16. Although Peru had been identified as the country with the greatest number of enforced disappearances, the Peruvian Government had failed to open any serious investigations to find those responsible. Absolute impunity for violators of human rights had institutionalized torture which had now become a matter of routine. On the pretext of waging a counter-insurgency campaign, The Government of Peru was in fact crushing any manifestation of discontent.

17. The fact that lawyers could no longer exercise their right to work since they were accused of being terrorists and risked life imprisonment if they

defended a prisoner of conscience was extremely worrying. The judicial system continued to be a factor in maintaining injustice and impunity. Its lack of genuine autonomy and its extreme politicization made it impossible to guarantee individual rights and freedoms. It was time that the international community was alerted to what was happening in that part of Latin America and tried to find solutions without delay.

18. In conclusion, the situation of prisoners in East Timor could not be passed over in silence. Dozens of mostly young people had been illegally and arbitrarily detained in secret detention centres.

19. The arrest and conviction of Mr. Guzmao, the leader of the opposition to the annexation should be considered void since the trial took place under Indonesian law rather than Portuguese law. Furthermore, he had not been tried as a political prisoner, he had been detained incommunicado for over 20 days and had not been allowed to name his own defence counsel. The same procedure was being repeated with the other leader of the opposition, Mr. Mau-Huno, who would also certainly be sentenced to life imprisonment unless the international community applied corrective measures to ensure that Indonesia respected the rights of persons who were not its nationals.

20. Mr. KHALIL, speaking on agenda item 10 (b), pointed out that in paragraph 17 of the report on states of emergency (E/CN.4/Sub.2/1993/23), the Special Rapporteur had noted that some of the proposals put forward to him with regard to his mandate and working method deserved being brought to the attention of the Sub-Commission. In that connection, he wished to endorse paragraph 18 (b) which proposed the examination of which human rights were most frequently affected by the proclamation of states of emergency. Since it was important to build up a picture of the human rights situation in the world particularly with regard to states of emergency, the proposals contained in paragraph 18 (c) were important as more wide-ranging information would be useful in ascertaining the fate of detainees and the severity of sentences.

21. Although he agreed with paragraph 18 (d), (e), and (f), he was concerned that they might make the work of the Special Rapporteur more difficult in view of the limited resources available. With regard to paragraph 18 (h), which dealt with a mechanism to be established within the framework of the Centre for Human Rights to monitor the legitimacy of the declaration of states of emergency, that would certainly add to the extremely heavy workload with which the Centre was already coping. That made the proposal in paragraph 18 (a) even more important since it placed a time-limit on information on countries that had proclaimed or lifted a state of emergency.

22. The Special Rapporteur should also provide information on human rights in cases where exceptional measures were taken by a State which had not declared a state of emergency.

23. With reference to the section of the report headed "Functions of Parliament during a state of emergency", it should be recalled that Parliaments were supposed to protect human rights and should seriously consider security measures which might affect human rights.

24. He particularly welcomed the cooperation between the Special Rapporteur and the African Commission on Human and Peoples' Rights.

25. Mrs. CHAVEZ, Rapporteur, Working Group on Detention, introducing the report of the Working Group (E/CN.4/Sub.2/1993/22), said that she wished to point out that Mr. Joinet had proposed that the so-called "synopsis" document hitherto submitted under Sub-Commission resolution 7 (XXVII) should be suspended in the absence of any information from the usual sources, particularly the non-governmental organizations (para. 15). After considerable discussion, the Working Group had decided to recommend to the Sub-Commission not to continue issuing the report of the Secretary-General and the synopsis of materials pursuant to Sub-Commission resolution 7 (XXVII) of 20 August 1974 (para. 17).

26. Mr. Joinet, supported by the International Movement against All Forms of Discrimination and Racism, had proposed that the elaboration of a draft declaration on habeas corpus should be considered at one of the next sessions of the Working Group (para. 23). He had also stated that the draft protocol recommended by Mr. Chernichenko and Mr. Treat should be preceded, for the sake of effectiveness, by a declaration, in accordance with the usual United Nations practice. In that connection, the Working Group had decided to postpone the examination of the issue until its next session pending consideration by the Sub-Commission of the above-mentioned report of the Special Rapporteurs (paras. 25 and 26).

27. The Working Group had recommended a slight modification to agenda item 3 which would read:

> Issues related to the deprivation of the right to life, with special reference to: (a) Imposition of the death penalty on persons less than 18 years of age and on the mentally and physically disabled; (b) Questions relating to summary, arbitrary and extrajudicial executions.

In that connection, she wished to point out that following an intervention by Mr. Sacher a correction would be issued adding a paragraph which would state that although questions relating to summary, arbitrary and extrajudicial executions should be considered under that agenda item, it should be made clear that they were not related to the death penalty, which no matter how much it might be abhorred was a legal exercise of power.

28. Finally, at the proposal of Mr. Joinet, the Working Group had decided to consider at its next session follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearances. The Working Group had then adopted the report as amended.

29. Mrs. ATTAH said that she wished to thank the Rapporteur and the Working Group on Detention for their report. She had been concerned, however, to see that Nigeria had been listed as a country where the execution of minors took place (para. 32). That had occurred as the result of a misunderstanding by Amnesty International about a notorious case in which persons alleged to be juveniles had been found guilty of armed robbery in Lagos and sentenced to death. Although the media had claimed that they were under-age, the Ministry

of Justice had said that they were over 18. Following the furore they had not been executed but imprisoned for four years.

30. Mr. CHERNICHENKO, speaking on agenda item 4, said that over the previous year he had prepared a detailed working paper on the definition of gross and large-scale violations of human rights as an international crime, which had turned into a small report (E/CN.4/Sub.2/1993/10). The main issue of the report was that the time had come to adopt as a principle the following proposition, namely that gross and large-scale violations of human rights ordered or sanctioned by governments should be regarded as international crimes.

31. In section I B, he had attempted to formulate criteria for the classification of human rights violations. Gross and large-scale violations of human rights could take place when the government lost control of a situation. The question then arose of the government's responsibility but the violations could not be described as international crimes. However, when they were ordered, sanctioned or instigated by governments, then they became international crimes.

32. Before going into greater detail on the definition of international crime, as contained in article 19 of the draft articles on State responsibility which had been provisionally adopted on first reading by the International Law Commission, he wished to point out that in paragraph 30 of the English text of the working paper, part of a judgement given by the International Court of Justice had been described as the judgement itself. It clearly was not.

33. A distinction had to be drawn between international crimes, which were committed by States, and crimes under international law, which were committed by individuals. The latter might, however, be government agents that could be used to perpetrate international crimes.

34. A few errors had occurred in the English text and had been corrected in a corrigendum. Moreover, in the last sentence of paragraph 29 of the working paper, the words "as a crime under international law" should be replaced by the words "as an international crime".

35. In order to avoid politics and to concentrate on purely legal considerations, he had tried not to refer to specific situations. The best way of continuing the work would be in the form of a draft declaration, which, if adopted by consensus, would have great prestige. He had postponed the drafting of a preamble until a later date, since he would first like to have an exchange of views on the proposed operative part. If his ideas were supported by the Sub-Commission, it should be possible to prepare a final draft by 1994.

36. Mr. GUISSÉ, speaking on agenda item 10 (a) and referring to the preliminary report on the impunity of perpetrators of violations of human rights (E/CN.4/Sub.2/1993/6), said that he and his fellow Special Rapporteur Mr. Joinet had highlighted the causes of de facto impunity and had tried to define what legal impunity was. Attention had been given to amnesties whereby governments gave easy pardons to their agents. In such cases the offence

ceased to be an offence, although the civilians who had suffered continued to be victims. Such amnesties obviated the objective of punishing human rights violations wherever they occurred. They were frequent in some countries and amounted to a denial of justice. The practice of using, for political ends, a President's power to grant pardons also needed to be countered.

37. The problem of impunity was not limited to State responsibility but was also connected with other human rights problems. In any case, the State should be held responsible for making reparation, as should individual violators of human rights acting either alone or in groups.

38. It had not been possible to study economic, social and cultural rights within the framework of the current preliminary report, since the mandate of the Special Rapporteurs was limited to civil and political rights. It was very important that the final report should be comprehensive. For that purpose the Special Rapporteurs would draw upon the contents of other studies prepared for the Sub-Commission and upon the assistance of NGOs, without whose valuable contributions the preparation of the present preliminary report would not have been possible.

39. Mr. EIDE, speaking on items 10, 11 and 4, said that it was deplorable that the Sub-Commission had so little time in which to discuss the rich harvest of profound studies before it, some completed, others in progress. It should concentrate on the follow-up to be given to them.

40. Several studies converged on the same basic problem of how to ensure a civilized system of government even in times of turbulence and violence. Social, ethnic and religious conflicts persisted, and new ones were erupting in many parts of the world. Religious and ethnic fanaticism was on the rise. Even some governments had come under its influence and engaged in or supported violence and terrorism in other countries. Extremists among diaspora groups joined with separatist forces fighting the governments of sovereign States.

41. In such a situation one principle had to be kept clearly in mind: the task of a government was to protect, against all odds, the continuation of a civilized and tolerant society. Human rights provided the main guidance in such circumstances. Governments should respect them, and also protect them. Without government, without law and order, civilization collapsed into blind hatred and anarchy. Nevertheless, the maintenance of law and order must itself be conducted in ways which respected the requirements of civilization as reflected in human rights instruments. That was no simple task when governments were forced with the blind, fanatic and hateful forces of ethnicity, religious fanaticism or movements of rage such as Sendero Luminoso.

42. Much progress had been made in clarifying the limits to be set for governments in their maintenance of law and order. The studies prepared under agenda items 10 and 11, as well as the studies on impunity and compensation prepared under item 4, helped the Sub-Commission to move even further in that direction. The Sub-Commission had, however, failed to address the other side of the coin - how to deal with hate-filled persons who were not yet in the government but who might be there tomorrow, engaging in extensive violations of human rights.

43. The problem of terrorism, which involved massive violations of human rights, was becoming increasingly serious. There could be State terrorism and non-State terrorism. The involvement of security forces in the massacre of unarmed demonstrators or in attacks on the civilian population, using rape and the destruction of homes as a means of intimidation, constituted State terrorism. There was increasing evidence that some civilian governments had very limited control over their security forces and governed only with the latter's consent. Thus the use of military courts needed to be dealt with in the context of the study on a fair trial. There were indeed civilian governments which wanted to end the spiral of violence and counter-violence but whose limited ability to control the security forces gave them very little margin of operation.

44. There was also the terrorism conducted by non-State entities, whether ethnic separatists, religious fanatics or blindly indoctrinated movements seeking social upheaval. So far very little creativity had been shown in developing ways and means of preventing human rights violations by such terrorists. It could be claimed that it was the responsibility of the government to apprehend them and to ensure that they were prosecuted under conditions of fair trial, but in some cases the government was not able to do that and the harm had already been done. A start could be made, at least, by examining the international links of terrorist organizations and by identifying persons or organizations in other countries that provided them with financial or ideological support or even sponsored mercenaries or sent "volunteers" to participate in the violence. Some non-governmental organizations such as Amnesty International had begun to consider that aspect of the problem. He hoped that others would follow suit, and he himself would be prepared to present a working paper on the subject, without financial implications, for the Sub-Commission's next session in 1994.

45. The studies under consideration at the current session included the preliminary report on the impunity of perpetrators of violations of human rights (E/CN.4/Sub.2/1993/6). The urgency of that subject was well evidenced by the present negotiations on Bosnia and Herzegovina. There was a danger that, in the negotiations, the human rights issues would be put aside and that partial impunity would be provided for. Many members of the Sub-Commission had therefore submitted a draft resolution demanding that the investigation of violations of humanitarian law committed in the former Yugoslavia be intensified and that the international tribunal be quickly brought into operation. The situation in question was one in which the main violators were not government agents but ethnic fanatics, some of whom were actually participating in the negotiations.

46. He endorsed the approach taken by the study on impunity but recommended that its scope be broadened to examine ways in which the international community could assist in ensuring that perpetrators of gross human rights violations were brought to justice, even when they were not government agents. The report should also call for greater vigilance by States in preventing mercenaries and others from among their own citizens from participating in organized violence in other States and in preventing militant and violent organizations from receiving funds and armaments from outside.

47. One of the major achievements of the Sub-Commission was Mr. van Boven's study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8), which had opened up a new chapter in the protection of human rights, inspired a number of important intellectual contributions and, more importantly, contributed to a growing sense of responsibility among governments. In that connection he had noted with great pleasure the comments made by the observer for Japan, acknowledging the concern of the present government of Japan for the suffering inflicted on thousands of women under a previous and very different government. It would be appreciated if the example of the present Government of Japan could be followed by all other States whose earlier regimes had committed gross violations of human rights.

48. In Mr. van Boven's study, there remained the problem of compensation and reparation when gross violations had been carried out by non-governmental entities. A very specific instance was that of Bosnia, where the violations had been perpetrated not by the Government but by ethnic groups, quite clearly with assistance from neighbouring States. In his opinion, the individuals who had participated in arson, murder, rape and destruction were personally responsible for the reparations which had to be paid to the victims, and the governments of the countries which had aided and abetted the violations should also be held responsible for paying such compensation. There was also the further problem of States which had shown negligence in not preventing mercenaries and volunteers from joining terrorist or violent movements in other countries or which had allowed arms to be transferred. Mr. Chernichenko's study could be useful in that context.

49. One of the most important studies under agenda item 10 was that on the impunity of perpetrators of violations of human rights (E/CN.4/Sub.2/1993/6). An appropriate mechanism must be developed to bring that practice to an end but he would comment on it at a later stage.

50. He appreciated the work done by Amnesty International in listing States which maintained the death penalty. He suggested that Amnesty International should provide more specific information on those States which retained the death penalty even for persons who, at the time of the commission of the offence, had been below the age of 18 or mentally sick. The Working Group on Detention and the Sub-Commission should redouble their efforts to abolish the death penalty altogether, and in particular to prevent its use for religious or political purposes.

51. The Sub-Commission's work had been facilitated by the successful operations of the Working Group on Administrative Detention established by the Commission on Human Rights, whose reports should be made available to the Sub-Commission at subsequent sessions. Mr. Joinet was to be congratulated on the work which he had done in preparing the background.

52. Thanks were due to Mrs. Palley for bringing out the very substantial dangers involved in the privatization of prisons. A thorough study of that subject was required, and the Sub-Commission should find time to discuss the issues involved in greater depth.

53. The report on the protection of United Nations staff members that was due to be presented to the Commission on Human Rights in 1994 should also be considered by the Sub-Commission.

54. The individualization of prosecution and penalties and repercussion of violations of human rights on families appeared to be a serious problem, particularly in occupied territories and in ethnic and religious conflicts, where, according to information presented by numerous observers, brutal methods were sometimes used against family members in order to extract information. In the next few years the Working Group on Detention should discuss how such violations could be monitored and counteracted.

55. The work done on the right to a fair trial was a major achievement in the history of the Sub-Commission. In particular, the identification of States which operated a dual system of trial procedures, of the problem of special or military courts and of the departures from the normal procedures of a fair trial when the offence was political in nature, particularly during proclaimed or de facto states of emergency, was most welcome. He endorsed the suggestion that an international instrument should be prepared to ensure a fair trial under all circumstances, including during states of emergency. It might first take the form of a declaration whose implementation would be monitored by the United Nations so that a binding protocol or similar instrument could be prepared later.

56. He congratulated Mr. Despouy on his report on states of emergency (E/CN.4/Sub.2/1993/23), which contained some interesting suggestions for its further development, particularly those listed in paragraph 18. Several of them ought to be included in the resolution to be adopted by the Sub-Commission on the continuance of Mr. Despouy's work.

57. In connection with states of emergency, he pointed out that a military coup had taken place in Azerbaijan at the end of June 1993. According to the information he had received, the democratically elected President of the country had had to flee to Nakijevan, a separate and autonomous part of Azerbaijan. The President of the Parliament, Mr. Isa Gambarov had been detained and was apparently being held in isolation. He had been maltreated and it was feared that he might be executed. He himself had twice met Mr. Gambarov in the course of his efforts to help find a solution to the Nagorno-Karabakh conflict and knew him to be a man of deep democratic conviction committed to a peaceful settlement of the conflict. The coup had in reality established a state of emergency, although he did not know whether it had been proclaimed by the new regime or whether the Secretary-General or Mr. Despouy had received any communication on the matter. He therefore requested Mr. Despouy to address a request to the Government of Azerbaijan seeking clarification as to the legality of the change of regime in Azerbaijani law and the measures of derogation taken by the incumbent regime.

58. Mr. SACHAR, speaking under item 10 (d) on the fourth report prepared by Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1993 and Add.1-2), said that there was merit in the proposal for a third optional protocol to the International Covenant on Civil and Political Rights, aiming at guaranteeing under all circumstances the right to a fair trial and a remedy. The report was not clear on whether the maximum period for which a

person could be detained should exceed 24 hours. He considered that the period of preliminary detention should be limited to 24 hours and that in no circumstances should a person be withheld from being produced in court. In India no person who had been arrested could be kept in police custody, without the police producing him before a court which had full authority to release him or to hold him pending an investigation.

59. The constituents of the right to a fair trial included the right to counsel, the right to cross-examine witnesses, the right to have a witness brought before the accused and the right to be informed of the case against him. He was strongly opposed to the practice in recent years of permitting courts to withhold the identity of witnesses, because of the threat of terrorism, as that practice vitiated the right to cross-examination.

60. Administrative detention, as a matter of exception was now accepted as permissible in India. He would like however to emphasize that such detention must be reviewed by three judges of the State Supreme Court who could, if they found that the reasons for detention were not relevant, order the release of the detainee. Such an order was always obeyed by the executive authorities and it was unthinkable, in India, that any order of the court could be disobeyed. Any such disobedience would result in the officer concerned being punished for contempt of court, including imprisonment. That had in fact happened in the fortunately few cases which had occurred.

61. The habeas corpus remedy in India was not derogable even during a state of emergency. Indeed, even during an emergency the right to life could not be suspended as was fully consistent with the requirements of articles 4 and 6 of the International Covenant on Civil and Political Rights.

62. The proclamation of a state of emergency could only be declared by the Executive Power if Parliament, an elected body, was ready to ratify it. A state of emergency could only be declared in the cases of armed insurrection or state of War. If Parliament refused to ratify, no emergency could be declared, unlike the situation in the United States where however a different political system defined the respective powers of the President and Congress. In India, an emergency could only be imposed for six months, extendable to a maximum of one year. Power to suspend or dissolve Parliament, even during an emergency, did not exist in India.

63. The right of compensation, to which Mr. van Boven had referred, in his study (E/CN.4/Sub.2/1993/8) was covered by important legal jurisprudence in India; the rules of locus standi had been dispensed with. In matters of denial of the legal or fundamental rights of the poor and vulnerable sections of the community, even a letter sent by a public interest person would be entertained by the courts. He himself had had the occasion to award compensation and to order prosecution of officials for denial of or interference with the basic rights of citizens.

64. Mr. van Boven's point regarding compensation in cases of forced evictions had also been developed by courts in India and the Supreme Court had ruled that in cases of forced eviction because of the need to develop State projects or other requirements, in addition to monetary compensation, the evacuees were entitled to equivalence in land, priority in employment in the project

programme and also had the right to resettlement, as a community, in the neighbourhood just as they had been before they had been displaced.

65. Referring to Mr. Despouy's sixth annual report (E/CN.4/Sub.2/1993/23) on the question of human rights and states of emergency, he would like to point out that there was no emergency in Andhra Pradesh, Punjab or Kashmir. Both Andhra Pradesh and Punjab had democratically elected Governments; in Punjab elections for local bodies had recently been held. The applicable laws were the same in those States and the judiciary continued to have the same powers as in the rest of the country.

66. Mrs. KSENTINI, introducing her second progress report on human rights and the environment (E/CN.4/Sub.2/1993/7) under agenda item 4, said that the report discussed the recognition of the environment as a human right and as the basis for the setting of standards at the national, regional and universal levels. The report included new developments since her first progress report submitted in 1992. It also contained preliminary recommendations; a final report would be prepared for submission to the next session of the Sub-Commission.

67. In chapter I, on national provisions and practises, the report provided supplementary information on Afghanistan, Angola, Bulgaria, Chad, El Salvador, Lao People's Democratic Republic, Malta, Mongolia, Mozambique, Nepal, Romania, Seychelles, Republic of Slovakia and Republic of Slovenia. The section on national legislation provided additional information on Argentina, Bolivia, Brazil, China, Peru, Russian Federation, Tunisia, the United Kingdom and Venezuela. She wished to thank those non-governmental organizations and governments which had provided information.

68. In the section on cases in national courts, she had tried to determine the trend of developments affecting the environment. Details of cases in Chile, Colombia, India and Sri Lanka were included.

69. In chapter II she had tried to identify regional developments over and above those specified in her earlier report. Not much additional information had been available on Asia or Africa; some was available regarding Latin America. Basically however chapter II covered information available regarding Europe, including, in particular, decisions and comments of European human rights bodies. By and large the earlier trend continued; the right to the environment as such was not yet being taken into account but, in European jurisprudence, there was a recognition that human rights could be violated through the degradation of the environment.

70. Two cases with environmental facets under consideration by the Inter-American Commission on Human Rights had been mentioned in the 1992 report. A third petition had subsequently been filed with the Commission by a member of the Mexican House of Representatives concerning an ecologically devastated area in the United States-Mexico border area.

71. Decision and comments on the environment as a human right had been made by United Nations human rights bodies. In their initial reports to the Committee on the Rights of the Child under article 44 of the Convention on the Rights of the Child, a number of States had indicated their concern about children and the state of the environment. The trend of opinion in the Committee had been to refrain from rejecting environmental elements which could jeopardize the rights set out in the Convention. The practice of the Committee would be very important.

72. On 8 April 1993 the Human Rights Committee had considered the admissibility of Communication No. 429/1990 dealing with the threat to the right to life represented by the deployment of cruise missiles fitted with nuclear warheads on Netherlands territory. The Committee had however declared the communication inadmissible because the alleged facts did not place the authors in the position to claim to be victims whose right to life had then been violated or under imminent prospect of violation.

73. The practice of the Committee on Economic, Social and Cultural Rights was for State parties to submit reports on the steps they had taken to implement the International Covenant on Economic, Social and Cultural Rights. On several occasions those reports had involved the Committee in discussions with government representatives about human rights issues that related directly to the environment.

74. The draft universal declaration on indigenous rights also referred to the impact of environmental issues on indigenous rights. Further references to environmental damage to human rights were contained in paragraphs 17, 18, 19, 20, 27 and 38 of the report. She would encourage the Working Group on Indigenous Populations to include specific provisions relating to the environment in the draft declaration because of the close link between indigenous groups and the environment.

75. Chapter IV referred to the World Conference on Human Rights and to the Vienna Declaration and Programme of Action which, in Part I, paragraphs 10 and 11, contained specific references to the right to development and the environment. She would encourage the Centre for Human Rights to improve the machinery for cooperation with the Commission on Sustainable Development.

76. Parts C, D and E of chapter IV dealt with the initiatives of the World Health Organization, the Food and Agriculture Organization of the United Nations and the Office of the United Nations High Commissioner for Refugees and made specific reference to the direct interaction between the environment and refugees and displaced persons.

77. The International Court of Justice was currently seized of the Nauru v. Australia case concerning the issue of government liability for environmental damage caused by severe land degradation. She suggested that Mr. van Boven might wish to monitor the evolution of that case.

78. The International Law Commission had adopted, in first reading, the draft Code of Crimes against the Peace and Security of Mankind, article 26 of which

dealt with wilful and severe damage to the environment. It was the view of the International Law Commission that wilful damage to the natural environment should be prosecuted.

79. Preliminary conclusions and recommendations were contained in paragraphs 116 to 133 of the report. She had left open the question of the preparation of a new international instrument on the right to a satisfactory environment or environmental rights as she considered it important to wait for practice to crystallize the areas of consensus that might open the way to a possible codification of those rights. The human rights component of the right to a satisfactory environment did however lend itself to immediate implementation by various bodies under existing mechanisms.

80. Other recommendations included the drafting of guidelines in order to address the environmental aspect of universally recognized human rights. A further recommendation was that a meeting of experts lasting five working days should be organized under the auspices of the Centre for Human Rights with the object of helping to work out a series of practical recommendations. She further recommended that the various human rights bodies should examine, in the various fields of concern to them, the environmental dimension of the human rights under their responsibility.

81. In conclusion, it was her view that consideration should be given to the desirability of establishing a mechanism for monitoring situations, perhaps in the form of a thematic special rapporteur, and to the appointment of a mediator for the environmental aspects of human rights.

82. Mr. Al-Khasawneh took the Chair.

83. Mrs. CHAVEZ, speaking on agenda item 10, said that the administration of justice and the human rights of detainees were fundamental issues of interest to the Sub-Commission. Earlier in the session she had mentioned her concerns about the human rights of persons who had been held or were still being held in Cuban jails and whose basic legal and human rights had been violated. It should be pointed out that that problem was not unique to Cuba. It was unfortunately endemic in many parts of the world. She had, on previous occasions, spoken of the situation in Iran, Iraq, Myanmar, China and Sudan, but there were many other countries which gave cause for concern. With respect to Cuba however, although the country itself was small - and now that it lacked a sponsor in the shape of the former USSR, relatively powerless - its human rights affronts were egregious and of long-standing. If anything, they had become worse as the situation within Cuba deteriorated.

84. It seemed that there were at least two broad categories of issues related to the administration of justice and human rights of detainees. The first involved those States which had within their legal system appropriate guarantees which were meant to protect the rights of individuals in the administration of justice but which none the less ignored those guarantees in specific instances. Individuals whose rights were denied by capricious or selective application of legal guarantees were no less victims than persons whose rights were denied in the context of the second category. That category included States that had no judicial and legal guarantees protecting the rights of individuals within the justice system. In her view, it constituted

a more serious problem. Firstly, it had at least the potential for affecting far greater numbers of persons, since everyone who lived within such a State was denied basic rights. Secondly, the very institutional nature of such violations was less amenable to change. It was not a matter of removing or punishing renegade officials who ignored the clear intent of the law or who violated the laws themselves, but rather involved the necessity of fundamental changes within the system itself.

85. During the forty-seventh session of the General Assembly, the Secretary-General had transmitted to the members of the Assembly the interim report of the Commission on Human Rights Special Rapporteur on the situation of human rights in Cuba (A/47/65). Because many of the concerns expressed in the report were specifically related to agenda item 10, she wished to draw attention to those issues. Firstly, it was regrettable that the Special Rapporteur's task had been made more difficult because the Government of Cuba had refused to cooperate with him. Paragraph 10 of his report stated that like his predecessor in the role of Special Representative of the Secretary-General, the Special Rapporteur had endeavoured without any positive results to date, to maintain, pursuant to resolution 1992/61, direct contact with the Cuban authorities which he believed to be of crucial importance to enable him to carry out his mandate in the most effective manner. Although the request for the appointment of the Special Rapporteur had not originated in the Sub-Commission, it should no less share the concern of the Special Rapporteur that the Government of Cuba had impeded his work.

86. While Cuba was not, as she had said earlier, unique among nations in lacking institutional protections in the administration of justice, its violations were of the most serious nature and involved literally hundreds of persons who were prisoners of conscience. She had mentioned previously some dozen persons who in the course of the year had been detained, some of whom might still be in detention. Those names could be found in Amnesty International's excellent 1993 report. In addition, the Special Rapporteur's interim report listed 49 persons associated with human rights organizations who, according to the organization Americas Watch, were in prison as of the end of 1992. She would welcome a reply from the Government of Cuba on the status of those individuals. Despite Mr. Alfonso Martinez's reference to the availability of information about such persons under the Sub-Commission's private procedures, she hoped that the Government of Cuba would make such information generally available in the public session of the Sub-Commission's proceedings. She understood that some of the information might become available in reports to the Commission on Human Rights. In view of that likelihood, she would think that the Government had nothing to gain by remaining silent on the issue.

87. Persons whose cases were discussed in the Special Rapporteur's interim report included: Miguel Angel Ballaster Cintas, a member of the National Council for Civil Rights in Cuba. Mr. Ballaster had been arrested after having attempted to renounce medals awarded to him during the campaign in Angola. He had announced his intention of relinquishing his medals in a letter sent to the Council of State dated 10 April 1992; Marco Antonio Abad Flamand and Jorge Crespo Diaz had been arrested in late 1991, accused of enemy propaganda for having produced a documentary entitled Un dia cualquiera. According to the interim report, the prosecutor had called for a sentence of

eight years imprisonment; Santiago Medina Corzo, a physician, had been sentenced to four years for putting up a poster in his clinic calling for freedom for political prisoners; Yndamiro Restano Diaz and Maria Elena Aparacio, human rights activists, had been sentenced to 10 and 7 years respectively. Ironically, given the concern which had been voiced in the Sub-Commission about the treatment of persons engaged in civil disobedience, Restano's offence had been to attempt to publish a bulletin which allegedly urged civil disobedience; Sebastian Arcos Bergnes had been arrested and charged with rebellion. The prosecutor had asked for a six-year prison sentence during the trial which was held in 1992; Angel Gonzales Santos had been arrested after displaying a poster reading "Down with Fidel" and shouting anti-government slogans; Eduardo Vidal Franco, a doctor of internal medicine; Jorge Vazquez Mendez, a university student; and Rigoberto Carcelles Ibarra, a scientist, had been sentenced to six years (Vidal) and five years (Vazquez and Carcelles) for involvement in collecting signatures in support of a proposal for constitutional change; José Lopez Quinta, a university professor had been arrested for sending a letter to the Rector of the Central University which stated his disagreement with government policy and the need for change in the country. The prosecutor had asked for an eight-year term.

88. After the Special Rapporteur had released his interim report, a number of other persons had been temporarily detained in 1992, especially during the Government's crackdown on 10 December 1992 which coincided with United Nations Human Rights Day. If the Sub-Commission, as a body, needed any further evidence of the contempt with which the Government of Cuba regarded its work and that of the parent body, the Government's activities on 10 December would certainly provide convincing proof.

89. The Special Rapporteur had also been concerned about conditions in prisons. Among the most severe abuses referred to in the report had been those against Rodolfo Gomez Ramos, 42, who had been reported to have died in prison in March 1992. After having been denied medical treatment, Mr. Gomez was being transferred to a stricter prison but had died en route. A commission of inquiry had been requested, but information had not been available at the time of the Rapporteur's report. Once again, any information from the Government of Cuba concerning that incident would be appreciated. Another prisoner, Francisco Diaz Mesa, 24, had also died after being denied medical attention for pneumonia and being beaten by guards.

90. According to paragraph 47 of the interim report, beatings, far from being isolated incidents, were apparently administered regularly by the prison authorities in order to punish or intimidate.

91. Those abuses recurred, as stated in the report, because the system lacked laws and institutions designed to protect fundamental rights effectively by way of the guarantees of due process set forth in the Universal Declaration of Human Rights and in the basic principles relating to independence of the judiciary.

92. She hoped that under item 10 next year, the Sub-Commission would hear that conditions had improved in Indonesia, Peru, Colombia and many of the other countries that had been discussed at the present session. She was even

hopeful that there might be at least modest improvements in the conditions in Tibet and the rest of China. But she feared that conditions in Cuba would remain the same, especially if the Government could, with impunity, flout the Commission's resolutions. It was up to the Sub-Commission to ensure that the people she had mentioned and, the hundreds of others whose names had not been mentioned, were not forgotten.

93. Mr. van BOVEN, Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, thanked members of the Sub-Commission for their constructive comments on his study (E/CN.4/Sub.2/1993/8) under agenda item 4.

94. He recalled that Mr. Chernichenko had quite rightly emphasized that gross violations of human rights should be looked at in terms of the nature and type of violation, remembering that gross violations were not necessarily widespread but could affect just one person. That was particularly important when victims of human rights violations sought redress, as they sought compensation as individual persons. However, it was an unfortunate fact that gross violations were often on a large scale. He agreed with Mr. Chernichenko that a definition of which gross violations should constitute a crime in international law needed to be given further examination. He had also raised the question of whether entities other than the State, such as corporations, companies or institutions, could be held responsible for paying or playing a role in compensation. That was a highly relevant issue, but the study had dealt with the question only from the perspective of the responsibilities and duties of States in international law.

95. Mr. Eide had also raised the question of the criminal, civil and economic responsibility of non-governmental entities exercising effective power or that terrorized sectors of the population, a situation which was not unlike that in Bosnia and Herzegovina. Unfortunately, the study had dealt with that issue only in a footnote on page 56. The question should be looked at further.

96. Turning to the comments made by Mr. Joinet, he said that he agreed that in times of repression and persecution, some people became "criminalized" and that there was an urgent need to rehabilitate them. Paragraph 10 of the general principles in the study (E/CN.4/Sub.2/1993/8) stated that rehabilitation should include "legal, medical, psychological and other care and services, as well as measures to restore the dignity and reputation of the victims". He further agreed with Mr. Joinet that it was difficult to compensate, in financial terms, for mass violations of human rights which affected large sectors of the population. However, the study should be that financial compensation was only one of the many forms and types of reparation which could be sought by victims. As Mr. Joinet had stated, there were instances where States, instead of prosecuting the perpetrators of human rights violations, preferred to grant reparation to the victim. Experience showed that where States failed to investigate gross violations of human rights and establish criminal responsibility, it became more difficult for victims to obtain the reparation due to them.

97. With regard to Mr. Guissé's comment on the question of professional reparation in particular for persons who had lost their employment and been

deprived of the possibility of vocational training and education as a result of persecution or repression, particular reference had been made to that question in paragraph 8 and 9 (c) and (d) of the general principles dealing with forms of reparation and when discussing the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

98. He agreed with Mrs. Ksentini that if the authorities or responsible institutions of a State failed to take preventive measures to protect the environment and halt environmental damage, reparation should be due.

99. Issues concerning reparation for peoples who had suffered massive violations of their human rights as a result of slavery, the slave trade and patterns of colonization, a question of concern to Mrs. Attah, had been dealt with in paragraphs 23 to 25 of the study. It was indeed a complicated subject. He had emphasized the possibility of affirmative action for long-standing victims of certain massive violations. Such action would be of major significance in the context of South Africa, where there were both individual victims of human rights violations and many victims of apartheid in general.

100. He also welcomed the comments made by Mr. Sachar on the situation of the right to compensation in respect of case law in India.

101. In conclusion, he hoped that the study, which was part of an ongoing process, would provide a basis on which the Sub-Commission could continue the work and that the basic principles and guidelines would become a point of reference for the United Nations as a whole.

102. Mr. GANAPATHY (Observer for Malaysia), making a statement equivalent to a right of reply, said that Malaysia considered Aceh in Sumatra as an integral part of Indonesia and had not seen any evidence of repression or genocide as claimed by the Acehnese who had fled their country. His delegation believed that the Acehnese who had come to Malaysia illegally had done so not because of repression or persecution but because they were hoping to find better economic opportunities in Malaysia. A number of them had used their status as Acehnese to avoid being arrested and deported for illegal entry into Malaysia.

103. As far as Malaysia was concerned, the Acehnese who had entered Malaysia were illegal immigrants and would be subjected to the relevant laws and regulations in force in the country. It should be pointed out persons who were detained were provided with all the necessary facilities including adequate food, shelter and medical treatment. At no time were they denied or deprived of their basic rights during their temporary stay in Malaysia. His delegation also wished to emphasize that in dealing with the problem of illegal immigrants in the country, Malaysia had acted scrupulously, with due regard to the process of law and humanitarian considerations, to ensure that the safety and physical well-being of all those concerned were safeguarded.

104. His delegation hoped that the non-governmental organization concerned would, in future, refrain from distorting the facts and circumstances pertaining to the presence of illegal Acehnese immigrants in Malaysia.

105. Mr. WIDODO (Observer for Indonesia), making a statement equivalent to a right of reply, said that he was responding to statements which had been made by a number of NGOs under agenda item 10 and 11 with regard to the human rights situation in Indonesia, and in particular in the provinces of East Timor and Aceh. Those NGOs seemed to believe that the more the allegations were repeated the closer one came to the truth. His delegation was amazed at the presentations of many representatives of organizations whose headquarters were located thousands of miles away and who perhaps had only a very hazy geographical picture of the provinces in question, and yet claimed to have a full grasp of the situation. Most of the allegations were either outdated or inaccurate, or both, and his delegation could only conclude that the references were made as part of a systematic smear campaign against Indonesia. Such an exercise was not devoid of political motives and as such could not be tolerated.

106. With regard to the situation in Aceh, his delegation categorically rejected the depiction of Aceh as a region under military siege where torture, summary execution and disappearances were the order of the day. The fact was that the situation in Aceh was as normal as in other provinces of Indonesia, and public safety in general was better than in many cities of Europe and North America.

107. It was true that during the second half of 1989 and the first half of 1990, a security disturbance had occurred in the province, resulting from a combination of dissatisfaction following a government ban on the trade of cannabis and manipulation of the situation by separatist elements. The situation had certainly not been as bad as the dramatic picture painted by some speakers. Public order and security had been restored immediately and the judicial proceedings of those responsible were almost completed. Those separatist elements, operating under the banner of various NGOs and enjoying the protection of a certain developed country, continued to misrepresent the situation in Aceh. Their ultimate goal was not the protection of human rights but the dismemberment of the territorial integrity of Indonesia.

108. The same old allegations and misrepresentations also continued to be repeated with regard to East Timor, often in the form of eyewitness testimonies, in the knowledge that unlike court proceedings, the procedure of the Sub-Commission would not allow a cross-examination of eyewitnesses. The references tried to portray the trial of Xanana Gusmao and of many others who had committed criminal acts punishable by the law as unfair. However, that did not alter the fact that the trials had been held fully in accordance with existing criminal law procedure and that Xanana himself had pleaded guilty. It was on the basis of humanitarian considerations that Xanana and two others who had been convicted in relation to the Dili incident and who had submitted requests for pardon, had been given clemency.

109. Without regard to those misrepresentations, the Government of Indonesia nevertheless continued to be sensitive to any genuine effort that would improve the human rights situation of the people of Indonesia, in particular of those who were vulnerable to possible violations, such as detainees and prisoners. His Government had, for many years, worked closely with relevant and reliable human rights and humanitarian organizations in a quiet but effective way. As of 30 July 1993, the International Committee of the

Red Cross had fully resumed its programme of visits to detainees. Undue interference and politicization of its work by a third party would only have an adverse effect and be counterproductive to the humanitarian nature of its operations. To promote respect for human rights more effectively, a National Commission on Human Rights had been set up in Indonesia and was expected to be fully operational before long. In the view of his delegation, to launch allegations in an orchestrated manner, especially for political motives, and to translate them into a resolution of the Sub-Commission would not serve the common efforts to truly improve respect for human rights.

The meeting rose at 1 p.m.